

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Clear Picture, Inc.)	CSR-6183-A
)	
Petition For Modification of the Market of)	
Television Station WGGN-TV, Sandusky, Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 2003

Released: October 10, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Clear Picture, Inc. ("Clear Picture"), operator of a cable television system serving Wooster, Ohio, filed the above-captioned petition for special relief seeking to modify the designated market area ("DMA") of television broadcast station WGGN-TV, Sandusky, Ohio to exclude Wooster, Ohio. Sandusky and Wooster are located in the Cleveland, Ohio DMA. The petition is unopposed. For the following reasons, we grant the petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the

¹8 FCC Rcd 2965, 2976-77 (1993).

²Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. §76.55(e); *see Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁴

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁵

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which

³For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁴47 U.S.C. §534(h)(1)(C).

⁵*Id.*

stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁶

The Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁷

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁸

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.⁹

⁶H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁷*Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

⁸The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

⁹47 C.F.R. §76.59(b).

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed with a filing fee. The *Modification Final Report and Order* provides that parties may continue to submit additional evidence that they deem appropriate.

III. DISCUSSION

5. In support of its petition, Clear Picture states that it has not carried WGGN since the station began broadcasting in 1982, nor does any other cable system in the Wooster area carry the station.¹⁰ Clear Picture states that the station's Grade B contour falls 18 miles short of Wooster and that the station is located 60 air miles (79 road miles) from the cable community.¹¹ In addition, Clear Picture points out that Wooster and Sandusky, the station's city of license, have no economic or business connection. Furthermore, Clear Picture states that WGGN provides no programming local to Wooster,¹² and that the cable system carries 13 broadcast stations that serve Wooster with local programming.¹³ Clear Picture also states that according to Nielsen Media Research, WGGN has no measurable viewership in the Cleveland DMA.¹⁴ Clear Picture also argues that the Commission has previously modified WGGN's market to exclude Ashland and Medina, Ohio, located 45 to 50 miles from Sandusky, and closer to the station than Wooster.¹⁵

6. In light of the record, and lack of opposition, Clear Picture has satisfied the statutory criteria for market modification set forth in Section 614 of the Act.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (CSR-6183-A), filed by Clear Picture, Inc., **IS GRANTED**.

8. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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¹⁰ Petition at 6.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at 7.

¹⁵ See *Armstrong Utilities, Inc.*, 12 FCC Rcd 2498 (1997), *aff'd* 16 FCC Rcd 18118 (2001).

¹⁶ 47 C.F.R. § 0.283.